

ISSUES

Respondent and its insurance carrier appeal the decision by the Administrative Law Judge finding for purposes of preliminary hearing that claimant suffered accidental injury to his neck and back while in the course of his employment with respondent and ordering respondent to provide medical treatment and temporary total disability compensation while claimant is disabled from his employment. The specific issues raised by respondent and its insurance carrier are:

- (1) Whether claimant suffered an accidental injury arising out of and in the course of his employment with respondent.
- (2) Authorized medical treatment.
- (3) Nature and extent of disability.

Claimant moves to dismiss respondent's application for review by the Appeals Board alleging that respondent has failed to allege that the Administrative Law Judge exceeded his jurisdiction in granting the relief contained in his order of May 9, 1994. Thus the issue is raised by claimant as to whether the Appeals Board has jurisdiction to hear this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

We first address the issue raised on appeal by claimant of whether the Appeals Board has jurisdiction to review this appeal from a preliminary order pursuant to K.S.A. 44-534a. Although not itemized in his application for review, on oral argument respondent raised the issue enumerated above of whether claimant suffered an accidental injury arising out of and in the course of his employment with respondent. This issue was likewise argued before the Administrative Law Judge at preliminary hearing. Specifically, respondent alleges that claimant suffered an intervening accident or injury which is alleged to be the cause of his current symptoms and complaints. This appeal then does raise as a disputed issue whether the accidental injury arose out of and in the course of the employee's employment which is an issue specifically listed in K.S.A. 44-534a as one which shall be considered jurisdictional and subject to review by the Appeals Board on appeal from a preliminary hearing order. The second two issues raised by respondent concerning authorized medical treatment and nature and extent of disability are not jurisdictional issues and are therefore not reviewable on appeal from a preliminary order.

After review of the entire record and consideration of the arguments made by counsel, the Appeals Board finds for purposes of preliminary hearing that claimant has proven by a preponderance of the credible evidence that his condition is the natural and probable consequence of the injury which did arise out of and in the course of his employment and that his injury is not the result of an intervening cause. With this finding, the claim is compensable and the orders of the Administrative Law Judge are affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the decision of Administrative Law Judge Alvin E. Witwer, in his Preliminary Hearing Order dated May 9, 1994, is hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Alvin E. Witwer, Administrative Law Judge
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